

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

UNITED STATES OF AMERICA,

v.

ENCINES FELIPE SURLES, a/k/a Pe,  
Defendant.

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CRIMINAL FILE NO.

1:03-CR-81-4-TWT

**ORDER**

This is a criminal action. It is before the Court on the Report and Recommendation [Doc. 273] of the Magistrate Judge recommending granting the Government's Motion to Dismiss [Doc. 271] and denying the Defendant's Motion to Vacate Sentence [Doc. 260]. For the reasons set forth in the Report and Recommendation, the Defendant was not sentenced under the residual clause of the Career Offender guideline. In any event, the Supreme Court has held that the rule in *Johnson v. United States*, 135 S. Ct. 2551 (2015) does not apply to the Sentencing Guidelines. See *Beckles v. United States*, 137 S. Ct. 886, 197 L. Ed. 2d 145 (2017).

The Court approves and adopts the Report and Recommendation as the judgment of the Court. The Government's Motion to Dismiss [Doc. 271] is GRANTED. The Defendant's Motion to Vacate Sentence [Doc. 260] is DISMISSED. No Certificate of

Appealability will be issued.

SO ORDERED, this 9 day of August, 2017.

/s/Thomas W. Thrash  
THOMAS W. THRASH, JR.  
United States District Judge